

## **Planned Production**

### ***Frequently Asked Questions***

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#### **Q: What is planned production?**

**A:** Planned Production is a regulation under Chapter 40B that encourages communities to take a proactive approach to affordable housing development. The regulation is contained in 760 CMR 31.07(1)(i). If a municipality has an affordable housing plan approved by DHCD and is granted certification of compliance with the plan, a decision by the Zoning Board of Appeals (ZBA) relative to a comprehensive permit application will be deemed “consistent with local needs” under MGL Chapter 40B. “Consistent with local needs” means the ZBA’s decision will be upheld by the Housing Appeals Committee (HAC).

Fundamentally, Planned Production is about 1) creating a plan that establishes a strategy by which the municipality will meet its affordable housing needs in a manner consistent with the Chapter 40B statute and regulations and 2) producing housing units in accordance with the plan.

#### **Q: How does a municipality participate in planned production?**

**A:**

- First, the city or town submits to DHCD an affordable housing plan signed off by the chief elected official (CEO). The plan must meet the requirements of the regulation and the guidelines in order to be approved.
- Once DHCD has approved the plan, the municipality facilitates the production of affordable housing units according to the plan.
- When at least .75% of year round housing units have been produced within one calendar year that are eligible to be counted on the Subsidized Housing Inventory (SHI), the city or town requests certification of compliance with the plan.
- Once the municipality has achieved certification, the ZBA’s decision(s) regarding comprehensive permit application(s) during the period of certification will be upheld by the HAC.

#### **Q: Why did DHCD implement planned production?**

**A:** DHCD believes that by encouraging municipalities to take a proactive approach in the development of affordable housing communities are more likely to achieve both their affordable housing and community planning goals. Planned Production gives communities that are under the 10% threshold of Chapter 40B but are making steady progress in producing affordable housing on an annual basis more control over comprehensive permit applications for a specified period of time. This control allows these municipalities to manage the growth in their community and meet their affordable housing needs.

#### **Q: What is the difference between approval and certification?**

**A:** The distinction is important. Approval refers to DHCD’s action of reviewing an affordable housing plan and determining that it contains the elements required by regulation. Certification refers to DHCD’s determination that the municipality has produced units that are affordable to low- or moderate-income households totaling at least ¾ of 1% of year round housing units in one calendar year and in accordance with the approved plan. In order for a ZBA’s decision on comprehensive permits to be “consistent with local needs”, *certification (not approval) must be granted*.

**Q: What needs to be contained in the affordable housing plan?**

**A:** The plan must contain the three main sections listed below:

- Section 1. Comprehensive Housing Needs Assessment
- Section 2. Affordable Housing Goals and Strategies
- Section 3. Description of Use Restrictions

Please note: each section contains several separate requirements. Before developing a plan, please read in detail the most recent version of the Planned Production Guidelines:

<http://www.mass.gov/dhcd/ToolKit/PProd/RegGuide.pdf>

If you have questions after reading the guidelines, please call Phil DeMartino at 617-573-1357.

**Q: Should a community include a model deed rider or regulatory agreement to fulfill the use restriction requirement?**

**A:** No. Model documents can present legal and implementation problems. DHCD has developed some use restriction language that can be adopted by communities to fulfill the Planned Production requirements. Please see the Planned Production Guidelines:

<http://www.mass.gov/dhcd/ToolKit/PProd/RegGuide.pdf>

**Q: Does the plan allow for the community's character to be addressed?**

**A:** Yes. Preferred characteristics of residential development, for example infill housing development, clustered houses, and compact development may be included within the plan. Please note that characteristics placing special restrictions on the development of affordable housing (such as limiting size of affordable units, prohibiting diversity in types of housing, or applying other zoning constraints) will not be approved. In addition, affordable housing plans must be in compliance with all state and federal fair housing laws.

**Q: What should be included in the infrastructure analysis portion of the housing needs assessment?**

**A:** The infrastructure analysis should evaluate the capacity of water and sewer systems, roads, utilities, schools, and any other public facilities that will impact or be impacted by development. In addition, the assessment should include a related discussion of development constraints *and* the municipality's ability to mitigate those constraints.

**Q: Is it possible to see other community's plans that have been approved?**

**A:** Yes. All approved plans are posted on the web at:

<http://www.mass.gov/dhcd/ToolKit/PProd/ApPlans.htm>

**Q: How does DHCD evaluate the plans?**

**A:** Plans are reviewed to see that they contain all the required elements, in accordance with the regulations and guidelines. Then plans are reviewed to see that the elements of the plan are consistent with each other, such as whether the goals address the needs. Reviewers pay special attention to the analysis of data, numerical goals, mix of housing proposed, production schedules, deed restrictions, and preferred sites for affordable housing development.

DHCD has 90 days to approve or disapprove a *complete* plan. If a plan is missing information when first submitted, we will notify the municipality in writing and the 90-day review period will be suspended. Once we receive the additional information, the 90-day review period will begin again. If we request any changes, the revised plan must be accompanied by a letter from the Chief Elected Official endorsing the revised plan.

**Q: When does an approved plan become effective in the program?**

**A:** Once a plan is approved, it will be deemed effective retroactive to the date the complete plan was received by DHCD. If amendments are submitted for an already approved plan, the original effective date will still be used.

**Q: Once a plan is approved, can a city or town automatically stop all 40B applications?**

**A:** No. *The key to planned production is production of affordable housing pursuant to a plan.* Once a plan is approved it does not automatically stop all pending 40B applications or allow communities to turn away new comprehensive permit applications. In order for a ZBA's decision on a comprehensive permit application to be upheld as "consistent with local needs", a municipality must provide evidence to DHCD that at least .75% of housing units have been produced in accordance with an approved affordable housing plan so that we can certify the municipality has complied with its plan.

**Q: Is it possible to use existing plans or information in the development of the affordable housing plan?**

**A:** Yes. A municipality may already have a plan that contains some or all of the requirements. Master plans, Executive Order 418 Community Development Plans and housing certification strategies, or other affordable housing strategies may be useful in developing a plan for Planned Production. In addition, local realtors, the U.S. Census, and the media are all sources of free information that may be used in your plan. Make sure that existing plans or data are up-to-date.

For guidance on converting an E.O. 418 Community Development Plan to an affordable housing plan, see the "Adapting An E.O. 418 Community Development Plan" checklist on the Planned Production website: <http://www.mass.gov/dhcd/ToolKit/PProd/default.htm>.

**Q: When can certification be requested?**

**A:** A letter signed by the chief elected official must be sent requesting certification. In addition, any required documentation (comp permits/add new units form) must be included. Requests for certification can be submitted at any time during the calendar year in which the units are produced and up to January 10 of the following year. Please note: units counted for certification must be produced *after* the effective date of a plan (i.e. the date DHCD received a complete plan for review). The one exception is that units produced between August 1, 2002 and December 31, 2002 can be counted towards a municipality's *first* request for certification.

**Q: When does certification become effective?**

**A:** The effective date of certification is the date DHCD receives the request. The only exception to this rule is for requests made between January 1 and January 10 of the following year. These requests will be deemed to have been made on the last business day of the prior year.

For example, certification requested on September 10, 2004 will be effective on September 10, 2004. Certification requested on January 10, 2005 for units produced in 2004 will be effective on December 31, 2004.

**Q: How long does certification last?**

**A:** Certification lasts for one year if the municipality has produced .75% of year round housing units or two years if it has produced 1.5% (provided building permits for the units upon which the certification is based have been issued in a timely fashion in accordance with 760 CMR 31.04(1)(a)). For example, if a municipality requests certification on June 13, 2004 for affordable units produced in 2004 totaling .75% of housing units, the certification period begins on June 13, 2004 and ends on June 12, 2005. If the request were based on an increase of 1.5% of housing units, the certification period would end on June 12, 2006.

**Q: In the case of units created through a Comprehensive Permit, what happens if a community has achieved certification but has not issued building permits (for units used for certification) within 12 months of the date of those units becoming eligible for the Subsidized Housing Inventory (SHI)?**

**A:** Certification is suspended. Units which are no longer eligible for inclusion on the SHI can no longer be counted toward Planned Production certification. Should those building permits subsequently be issued prior to the expiration of the initial certification period, certification will be reinstated for the remainder of that initial certification period.

**Q: What units will count for certification?**

**A:** All units produced within one calendar year that are eligible for inclusion on the Subsidized Housing Inventory will count. They must be affordable to households earning 80% or less of area median income, deed restricted, and affirmatively marketed. The units may be newly permitted for construction or for rehabilitation. They may also be units created under a local program approved by DHCD or under the Local Initiative Program (LIP).

**Q: My community affordable housing plan was based on its community development plan. Can we count units produced before the affordable plan was approved?**

**A:** Municipalities submitting an existing plan, such as a master plan, that ultimately gets approved as an affordable housing plan can count units produced before the affordable housing plan is approved as long as they were **produced within the same calendar year** as the affordable housing plan submittal and in accordance with the provisions of the plan.

**Q: Can a community add up units produced over more than one year to meet the .75% threshold for certification?**

**A:** No, all units counted towards the .75% must have been produced in the same calendar year.

**Q: Is it possible to see a list of certified communities?**

**A:** Yes. All certified communities are posted on the web at:

<http://www.mass.gov/dhcd/ToolKit/PProd/default.htm>

**Q: How soon after permits are issued may a community request certification?**

**A:** Requests for certification may be submitted once the permits are final. In the case of comprehensive permits, final means the date the permit is filed with the city or town clerk if no appeals are taken. There

is a 20-day waiting period for the filing of appeals, so requests for certification should not be submitted until after this 20-day period. If a community issues a permit at the very end of a calendar year, the request may be submitted before the 20-day waiting period is over. We require that all certification requests for a given year be submitted by January 10 of the following year.

Please submit all requests for certification by using the "Requesting New Units Form" which can be found on the web at:

<http://www.mass.gov/dhcd/ToolKit/shi.htm>

**Q: When will a municipality know if it is certified in compliance with the plan?**

**A:** DHCD will determine if a municipality is in compliance with its plan within 30 days of receiving a request for certification. If the city or town is certified compliant with its plan, we will notify the chief elected official in writing. Regardless of the date of the certification notice, the certification period will be retroactive to the date we received the request for certification.

**Q: What if a community that is certified for one year creates enough units later that same year to reach 1.5%?**

In this case, DHCD would extend the certification period for an additional 12 months. An example is that a community produces .80% of units and requests certification on June 13, 2005. The certification period would be granted from June 13, 2005 to June 12, 2006. Later in 2005, the same community permits more units (.70%) that combined with the earlier .80% equals 1.5%. On October 2, 2005, the community requests an extension to their certification period. DHCD would still have 30 days to review the request, and if approved, we would amend the original certification period to run from June 13, 2005 to June 12, 2007.

**Q: Are all pending cases at the Housing Appeals Committee (HAC) impacted if a community achieves certification?**

**A:** No. If a development was under appeal before a certification period, certification will have no impact on the case.

**Q: When a community has achieved certification, can they automatically deny a comprehensive permit without holding a public hearing?**

**A:** No. The local zoning board of appeals must open a hearing within thirty days of receiving an application even under a certification period. The ZBA must render a decision within forty days after termination of the hearing. However, DHCD suggests that the certification letter be read at the public hearing because in a certified municipality, the ZBA's decision to deny or approve with conditions comprehensive permit applications will be deemed "consistent with local needs" under MGL Chapter 40B. "Consistent with local needs" means that the decision will be upheld by the Housing Appeals Committee (HAC).

**Q: Can a developer still appeal to HAC even if a community has a certified plan?**

**A:** Yes. However, the ZBA's decision to deny or approve with conditions comprehensive permit applications will be deemed "consistent with local needs" under MGL Chapter 40B. "Consistent with local needs" means that the decision will be upheld by the Housing Appeals Committee (HAC).

**Q: When is it necessary to submit amendments to a plan?**

**A:** The only time amendments are required is if an incomplete plan has been submitted for approval. Once a plan is approved, the municipality has the option to amend it at any time. We do not require that municipalities submit amendments when specific projects have changed, such as in size or location, but if the overall strategy or goals change, then we encourage communities to submit amendments to document the change(s).

**Q: Are all pending comprehensive permits subject to this regulation?**

**A:** No, the planned production regulation became effective on September 27, 2002, so applications filed with ZBAs prior to that date are held harmless. Applications made after that date are subject to the regulation.

**Contact Information**

For questions or further information, please call 617-573-1357 or send e-mail to [Phillip.DeMartino@ocd.state.ma.us](mailto:Phillip.DeMartino@ocd.state.ma.us).

Or visit the web at: <http://www.mass.gov/dhcd/ToolKit/PProd/default.htm>